



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 4597-99
8 August 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 22 September 1969 for three years at age 18. The record reflects that you were advanced to PFC (E-1) and assigned to duty in Vietnam on 29 June 1970. However, you were medically transferred from Vietnam on 8 September 1970 with a diagnosis of amblyopia of the left eye. You appeared before a medical board on 14 September 1970 and were found fit for duty.

The record further reflects that you were advanced to LCPL (E-3) on 12 November 1970 and served for the next nine months without incident. However, during the 10 month period from September 1971 to July 1972 you received three nonjudicial punishments (NJP) and were convicted by a special court-martial. Your offenses consisted of three periods of unauthorized absence (UA) totalling about 81 days, failure to obey a lawful order, and disrespect.

On 14 July 1972 you were reported UA and declared a deserter. The record reflects that about 30 months later, on 23 January 1975, you telephonically requested to participate in the Clemency Program established by the Presidential Proclamation of 16 September 1974. Thereafter, the Commandant of the Marine Corps issued to you orders to report to the Clemency Processing Unit at Fort Benjamin Harrison, ID for participation in the clemency program. On 3 February 1975 you agreed to perform to 16 months of alternate service and submitted a request for an undesirable discharge for the good of the service pursuant to the provisions of Presidential Proclamation No. 4313. On the same date, the discharge authority approved the request and you were discharged under other than honorable conditions.

On 30 June 1976, the Selective Service System terminated your enrollment in the Reconciliation Service Program because you did not complete your required period of alternate service. Termination from the program was based on information that you left an approved job without authorization and had been uncooperative with efforts to place you on another approved job.

On 24 April 1979, the Naval Discharge Review Board denied your request for an upgrade of your discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, Vietnam service, and the fact that it has been more than 25 years since you were discharged. The Board noted your contention that you were seen by mental health services prior to going to Vietnam but did not receive treatment to help you cope with what you experienced. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of three NJPs, a special court-martial conviction, and the fact you accepted an undesirable discharge for the good of the service under the provisions of the clemency program rather than face trial by court-martial for a prolonged absence of more than 30 months. The Board did not believe your nearly two years of unblemished service prior to September 1971, with less than three months in Vietnam, sufficiently mitigated your misconduct. You were given an opportunity to earn a clemency discharge through alternate service but you failed to comply with the requirements of the clemency program. You have provided no medical evidence to support of your contention that you were treated for a mental condition prior to enlistment or to Vietnam. Further, you provide no medical evidence that at the time of your service you suffered from a condition which rendered you incapable of distinguishing right from wrong or excused you of responsibility for your actions. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel

will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director